



BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2014-0099]

RIN 0579-AE06

Importation of Tomato Plantlets in Approved Growing Media from Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of plants for planting to authorize the importation of tomato plantlets from Mexico in approved growing media, subject to a systems approach. The systems approach would consist of measures currently specified for tomato plants for planting not imported in growing media, as well as measures specific to all plants for planting imported into the United States in approved growing media. Additionally, the plantlets would have to be imported into greenhouses in the continental United States and the importers of the plantlets from Mexico or the owners of the greenhouses in the continental United States would have to enter into compliance agreements regarding the conditions under which the plants from Mexico must enter and be maintained within the greenhouses. This proposed rule would allow for the importation into the continental United States of tomato plantlets from Mexico in approved growing media, while providing protection

against the introduction of plant pests. The proposed rule would also allow the imported greenhouse plantlets to produce tomato fruit for commercial sale within the United States.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0099>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2014-0099, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0099> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Lydia E. Colón, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2302.

SUPPLEMENTARY INFORMATION:

Background

Current Restrictions

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of quarantine plant pests.

The regulations contained in “Subpart--Plants for Planting,” §§ 319.37 through 319.37-14 (referred to below as the regulations), prohibit or restrict, among other things, the importation of living plants, plant parts, and seeds for propagation or planting.

The regulations differentiate between prohibited articles and restricted articles. Prohibited articles are plants for planting whose importation into the United States is not authorized due to the risk the articles present of introducing or disseminating plant pests. Restricted articles are articles authorized for importation into the United States, provided that the articles are subject to measures to address such risk.

Section 319.37-5 of the regulations lists restricted articles that may be imported into the United States only if they are accompanied by a phytosanitary certificate that contains an additional declaration either that the restricted articles are free of specified quarantine pests or that the restricted articles have been produced in accordance with certain mitigation requirements. Within the section, paragraph (r) contains requirements for the importation of restricted articles (except seeds) of Pelargonium or Solanum spp. into the United States. Solanum spp. restricted articles include tomato (*Solanum lycopersicum*) plantlets, in addition to other species and cultivars within the genus.

Paragraph (r)(1) of § 319.37-5 authorizes the importation into the United States of Pelargonium or Solanum spp. restricted articles from Canada under the provisions of a greenhouse-grown restricted plant program. Paragraph (r)(3) contains conditions for the importation into the United States of Pelargonium or Solanum spp. restricted articles that do not meet the conditions in paragraph (r)(1), and are from a country in which R. solanacearum race 3 biovar 2 is known to occur.

Paragraph (r)(3) specifies that the articles must be produced in accordance with a systems approach consisting of the following requirements:

- The national plant protection organization (NPPO) of the country in which the articles are produced must enter into a bilateral workplan with the Animal and Plant Health Inspection Service (APHIS) that specifies, among other things, the manner in which the NPPO will monitor and enforce the requirements of the systems approach.
- The production site where the articles intended for export are produced must be registered with and certified by both APHIS and the NPPO.
- The production site must conduct ongoing testing for R. solanacearum race 3 biovar 2 according to a testing procedure approved by APHIS, must only offer for export articles that have had negative test results for the disease, and must maintain records of the testing for at least 2 growing seasons.
- Each greenhouse on the production site must be constructed in a manner that ensures that runoff water from areas surrounding the production site cannot enter the production site, and must be surrounded by a 1-meter sloped buffer.
- Dicotyledonous weeds must be controlled within each greenhouse on the production site and around it.
- All equipment that comes in contact with articles of Pelargonium or Solanum spp. at the production site must be adequately sanitized so that the equipment cannot transmit R. solanacearum race 3 biovar 2.
- Personnel must adequately sanitize their clothing and shoes and wash their hands before entering the production site.

- Growing media for articles of Pelargonium or Solanum spp. at the production site must be free of R. solanacearum race 3 biovar 2, and growing media and containers used for the articles must not come in contact with growing media that could transmit R. solanacearum race 3 biovar 2.
- Water used in maintenance of the production site must be free of R. solanacearum race 3 biovar 2.
- Growing media used at the production site must not come in direct contact with a water source, and, if a drip irrigation system is used, backflow devices must be installed to prevent spread of R. solanacearum race 3 biovar 2 through the irrigation system.
- Production site personnel must be educated regarding the various pathways through which R. solanacearum race 3 biovar 2 could enter the production site, and must be trained to recognize symptoms of the disease.
- Pelargonium or Solanum spp. restricted articles produced for export to the United States must be handled and packed in a manner which precludes introduction of R. solanacearum race 3 biovar 2 to the articles and must be labeled with information indicating the production site from which the articles originated.
- If R. solanacearum race 3 biovar 2 is discovered in the production site or in consignments from the production site, the production site is ineligible to export articles of Pelargonium or Solanum spp. to the United States, and may only be reinstated if all problems at the production site have been addressed and corrected to the satisfaction of APHIS.

- A phytosanitary certificate must accompany the articles, and must contain an additional declaration that the articles were produced in accordance with the regulations.
- The government of the country in which the articles are produced must enter into a trust fund agreement with APHIS before each growing season, and must pay in advance for all costs incurred by APHIS in overseeing execution of the systems approach.

Section 319.37-5 authorizes the importation of certain restricted articles into the United States. However, it does not authorize the importation of restricted articles in growing media. Conditions for the importation into the United States of restricted articles in growing media are specifically found in § 319.37-8. Within that section, the introductory text of paragraph (e) lists taxa of restricted articles that may be imported into the United States in approved growing media, subject to the mandatory provisions of a systems approach. In § 319.37-8, paragraph (e)(1) lists the approved growing media, and paragraph (e)(2) contains the provisions of the systems approach. Within paragraph (e)(2), paragraphs (i) through (viii) contain provisions that are generally applicable to all the taxa listed in the introductory text of paragraph (e), and paragraphs (ix) through (xi) contain additional taxon-specific conditions.

Mexico is a country in which R. solanacearum race 3 biovar 2 is known to exist. Accordingly, the importation of Pelargonium and Solanum spp. restricted articles from Mexico into the United States is subject to the conditions in paragraph (r)(3) of § 319.37-5.¹

¹Notwithstanding the provisions in § 319.37-5(r)(3), a notice published in the Federal Register on April 18, 2013 (78 FR 23209-23219, Docket No. APHIS-2011-0072) added Solanum spp. plants for planting from all countries other than Canada to a list of taxa of plants for planting that are not authorized importation into the United States unless a pest risk analysis is prepared that identifies measures that will mitigate the plant pest risk associated with such importation. Solanum spp. plants for planting from countries other than Canada were added to this list in

Additionally, under § 319.37-8, neither Pelargonium nor Solanum spp. restricted articles from Mexico are currently authorized for importation in growing media.

Request from the National Plant Protection Organization of Mexico

APHIS received a request from the NPPO of Mexico to authorize the importation of tomato (Solanum lycopersicum) plantlets in growing media into the continental United States for propagation in greenhouses within the continental United States. The request came at the behest of potential importers of the greenhouse plantlets, who wish to use such greenhouse plantlets to produce tomato fruit for commercial sale within the United States.

In its request, the NPPO of Mexico specified that the plantlets would be produced from certified seed, would be produced in greenhouses constructed and maintained to be pest-exclusionary, would be shipped in growing media maintained under similar conditions, and would be safeguarded during movement to the continental United States to prevent plant pests from being introduced to the plantlets. Finally, the request pertained only to tomato plantlets that would be imported into greenhouses in the continental United States and maintained within these greenhouses to aid in the commercial production of tomatoes within the United States. The NPPO did not request that we allow the imported plantlets to be commercially sold in the United States. Accordingly, as we discuss later in this document, we would prohibit the selling of the imported tomato plantlets grown in greenhouses in the United States. However, the NPPO did ask that we authorize the fruit from the plantlets grown in greenhouses in the United States to be sold commercially within the United States.

order to prevent the plants for planting from disseminating tomato torrado virus and tomato severe leaf curl virus within the United States. Accordingly, the pest risk assessment and risk management document prepared for this proposal examined the risk that plantlets from Mexico grown under the conditions specified by the NPPO could become infected with these viruses, and determined the risk to be negligible based on those growing conditions.

In evaluating Mexico's request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and the RMD may be obtained from the person listed under FOR FURTHER INFORMATION CONTACT or viewed on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

The PRA, titled "Importation of Live Greenhouse-Grown Tomato Plantlets on Approved Growing Media from Mexico into the Continental United States; A Qualitative, Pathway-Initiated Pest Risk Assessment" (USDA 2014), analyzed the potential pest risk associated with the importation of tomato plantlets in approved growing media into the continental United States from Mexico. The PRA finds that, if the plantlets are produced in accordance with the conditions specified by the NPPO, there is a negligible risk of quarantine pests being introduced into the continental United States through their importation in approved growing media.

Accordingly, the RMD recommends that APHIS require the plantlets to be produced in accordance with the conditions in paragraph (r)(3) of § 319.37-5 and (e)(2)(i) through (e)(2)(viii) of § 319.37-8, which jointly would cover the growing conditions specified by the NPPO in their request. Since the PRA assumed that the greenhouse plantlets would not be commercially distributed, however, the RMD also recommends that the owner or owners of the greenhouses into which the plantlets would be imported enter into a compliance agreement with APHIS that will prohibit the plantlets from leaving the greenhouses for commercial sale. The compliance agreement would specify the conditions under which the imported plantlets could enter the greenhouses in the continental United States, and would specify the conditions under which they must be maintained within those greenhouses. The compliance agreement would also prohibit the imported plantlets from being shipped or otherwise removed from the greenhouses following

importation, except for the authorized removal of dead plantlets. The RMD notes that these conditions, jointly, will also help ensure that the imported greenhouse plantlets will produce tomato fruit that presents a negligible risk of disseminating plant pests and that the movement of tomato fruit derived from the greenhouse plantlets for commercial distribution will not result in the dissemination of plant pests.

Proposed Rule

Based on the findings of the PRA and the recommendations of the RMD, we are proposing to amend the regulations to authorize the importation of tomato plantlets in approved growing media from Mexico into the continental United States. Specifically, we are proposing to amend the introductory text of paragraph (e) of § 319.37-8 to add Solanum lycopersicum from Mexico as a restricted article that may be imported into the continental United States in approved growing media.

We are also proposing to add a new paragraph (e)(2)(xii) to § 319.37-8. This paragraph would authorize the importation of tomato plantlets in approved growing media from Mexico into the continental United States, if the plantlets meet all of the requirements in paragraphs (r)(3) of § 319.37-5 and paragraphs (e)(2)(i) through (e)(2)(viii) of § 319.37-8; and if the plantlets from Mexico are imported directly into a greenhouse in the continental United States, the owner or owners of which must have entered into a compliance agreement with APHIS. The required compliance agreement would specify the conditions under which the plantlets must enter and be maintained within the greenhouse and would prohibit the plantlets from being moved from the greenhouse following importation, other than for the appropriate disposal of dead plantlets.

We are also proposing that if all of the above requirements are correctly complied with, tomato fruit produced from the imported greenhouse plantlets may be shipped from the greenhouses for commercial sale within the United States. This proposed rule, through the conditions in paragraphs (r)(3) of § 319.37-5, paragraphs (e)(2)(i) through (e)(2)(viii) of § 319.37-8, and proposed (e)(2)(xii) of § 319.37-8, would thereby include the conditions specified by the NPPO of Mexico for the production of the plantlets in Mexico and allow for the importation of the plantlets in accordance with Mexico's request.

Finally, to clarify the intent and force of the compliance agreement, we are also proposing to add a definition of compliance agreement to the regulations. We would define compliance agreement to mean a written agreement between APHIS and a person (individual or corporate) engaged in the production, processing, handling, or moving of restricted articles imported pursuant to the regulations, in which the person agrees to comply with the regulations and the terms and conditions specified within the agreement itself.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

Based on the information currently available to us, we have no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

The proposed rule would allow the importation of tomato plantlets in approved growing media from Mexico into the continental United States. Currently, only tomato plantlets in growing media from Canada can be imported into the United States. The tomato plantlets from Mexico would be allowed to be imported only to APHIS-approved greenhouse facilities under compliance agreement, and would be used only for fruit production, not for the selling of the imported plantlets themselves.

Data are not available on the production or trade for tomato plantlets. However, U.S. greenhouse (protected-culture) tomato production and import levels provide evidence of the expanding derived demand for tomato plantlets. In 2011, protected-culture tomatoes made up 40 percent of the U.S. tomato supply, up from less than 10 percent in 2004; they now dominate the retail industry. The value of protected-culture tomato imports by the United States grew by two-thirds between 2009 and 2013, in response to expanding consumer demand, from \$795 million to \$1.33 billion.

Protected-culture tomato producers are classified in the North American Industry Classification System within Other Vegetable (except Potato) and Melon Farming (NAICS 111219), for which the Small Business Administration small-entity standard is annual receipts of

not more than \$750,000. The average market value of agricultural products sold by operations in this industry in 2012 was about \$314,000. While we are unable to determine the number of businesses that would be affected by the proposed rule, we can assume that most of them are small entities.

The proposed rule would enable U.S. producers of protected-culture tomatoes to draw upon Mexican plantlet suppliers in addition to Canadian and domestic suppliers. The NPPO of Mexico has stated that, if this rule were finalized, they would expect the exportation of approximately 4 million plantlets annually to the United States. It is unknown to what extent these tomato plantlets imported from Mexico will displace tomato plantlet imports from Canada and we therefore cannot project the net increase in imports. If there were no import displacement, we think that the tomato plantlet imports from Mexico could result in an increase in U.S. protected-culture tomato production of between 5 and 10 percent. However, we understand that the U.S. protected-culture tomato industry is in favor of having an additional source of tomato plantlets imports besides those from Canada.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the importation of greenhouse tomato plantlets in

approved growing media from Mexico into the continental United States, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading ADDRESSES at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2014-0099. Please send a copy of your comments to: (1) Docket No. APHIS-2014-0099, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, Room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the plants for planting regulations to allow the importation of greenhouse tomato plantlets in approved growing media from Mexico into the continental United States. As a condition of entry, the plantlets would have to be produced in accordance with the regulatory requirements of specific APHIS regulations which include a specific systems approach. This action would allow for the importation of tomato plantlets from Mexico into the continental United States while providing protection against the introduction of plant pests.

Allowing tomato plantlets from Mexico to be imported into the continental United States will require information collection activities, including phytosanitary certificates, greenhouse registration, commodity labeling, an operational workplan, and compliance agreements.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.02564 hours per response.

Respondents: The NPPO of Mexico, producers, and importers of tomato plantlets from Mexico in approved growing media.

Estimated annual number of respondents: 3.

Estimated annual number of responses per respondent: 4,181.

Estimated annual number of responses: 12,543.

Estimated total annual burden on respondents: 319 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.37-1 is amended by adding, in alphabetical order, a definition for compliance agreement to read as follows:

§ 319.37-1 Definitions.

* * * * *

Compliance agreement. A written agreement between APHIS and a person (individual or corporate) engaged in the production, processing, handling, or moving of restricted articles imported pursuant to this subpart, in which the person agrees to comply with the subpart and the terms and conditions specified within the agreement itself.

* * * * *

3. Section 319.37-8 is amended as follows:

a. In paragraph (e), introductory text, by removing the period after the entry for “Schlumberga spp. from the Netherlands and Denmark” and adding, in alphabetical order, an entry for “Solanum lycopersicum from Mexico.”.

b. By adding paragraph (e)(2)(xii).

The addition reads as follows:

§ 319.37-8 Growing media.

* * * * *

(e) * * *

(2) * * *

(xii) Plantlets of Solanum lycopersicum from Mexico must also meet the following conditions:

(A) The plantlets must be produced in accordance with § 319.37-5(r)(3);

(B) The plantlets can only be imported into the continental United States, and may not be imported into Hawaii or the territories of the United States; and

(C) The plantlets must be imported from Mexico directly into a greenhouse in the continental United States, the owner or owners of which have entered into a compliance agreement with APHIS. The required compliance agreement will specify the conditions under which the plants must enter and be maintained within the greenhouse, and will prohibit the plantlets from being moved from the greenhouse following importation, other than for the appropriate disposal of dead plantlets.

(D) If all of the above requirements are correctly complied with, then the tomato fruit produced from the imported greenhouse plantlets may be shipped from the greenhouses for commercial sale within the United States.

* * * * *

Done in Washington, DC, this 2nd day of March 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015-05058 Filed: 3/4/2015 08:45 am; Publication Date: 3/5/2015]